

**ANDOVER BOARD OF HEALTH**  
**Minutes**  
**February 28, 2011, 6:00 P.M.**  
**1st Floor Conference Room**  
**36 Bartlet Street**

The Board of Health Meeting was called to order at 6:02 p.m. Present were Ms. Candace B. Martin, Chairman, Dr. Donald H. Miller, Vice-Chairman, Ms. Katherine Kellman, Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

**I. Approval of Minutes**

- **Regular Meeting of January 10, 2011**

*Motion by Ms. Martin, seconded by Ms. Kellman to approve the regular Minutes of the Board of Health Meeting of January 10, 2011. Dr. Miller abstained. Unanimous approval.*

**II. Appointments & Hearings**

- **6:00 p.m. – David Kiu for Peking Garden – Show Cause Hearing (Continued) –**  
Mr. Carbone explained that Mr. Kiu was due to appear before the Board in March, but since we were combining the February and March Meetings to tonight, Mr. Kiu was in this evening so the Board could review his past two inspections. The November Inspection Report showed three critical violations, while the January report showed two critical violations; both inspections were done by a Private Inspector. Our staff inspection on January 25<sup>th</sup> revealed four critical violations including storing raw foods in close proximity to ready to eat food and improper use of the three-bay sink. Ms. Martin asked Mr. Kiu why he thought these issues were happening again and why they keep reoccurring after his staff had been doing so well. Mr. Kiu explained that he found his staff was becoming careless again and that he does address the problems with them after the inspections. He has designated two people to be in charge, but there is still a language barrier because they do not speak English well. Mr. Kiu spoke with the person who was ServSafe Certified about doing the proper sanitizing. He addressed the proper use of the three-bay sink, not defrosting food on the counter and keeping cooked and uncooked food on the proper shelves so no cross-contamination occurs. However, they revert back to their old ways during rush hours. There was much discussion with Mr. Kiu with concerns the Board had because his staff is not responding to the importance of these issues and the effect these issues could have on Mr. Kiu's business. These violations should not still be happening after working with the Private Inspector after all this time.

Dr. Miller stated that he knew Mr. Kiu was trying hard by using outside help, but that eighteen months have gone by and there are still recurring critical violations. The Board now needs to do something different because this plan is not working despite Mr. Kiu's best efforts. It is now time for the Board to take some drastic measures.

The Board considered closing the restaurant indefinitely or suspending food services for a period of time.

*For the purpose of discussion, Motion by Dr. Miller, seconded by Ms. Martin that the Board suspend the Food Service Permit for one week, and require that during that down time all employees be trained in ServSafe Awareness.*

**Discussion:** Ms. Martin inquired if ServSafe could be set up in a week's time. Mr. Carbone replied that they should be able to bring in someone at the restaurant to do the training for the entire staff in that amount of time because they are one day classes. The Board discussed the possibility of continuing the monthly inspections for another three to six months. Dr. Miller suggested another three months of inspections after the training.

*Motion by Dr. Miller, seconded by Ms. Martin, to amend the Motion to add that following the closure for one week, there will be monthly inspections by a Private Inspector, the Show Cause Hearing will be continued for another three months, and if there are any critical violations during that time, a meeting with the Board would be required at the next scheduled Board of Health Meeting.*

**Discussion Continued:** Mr. Kiu explained to the Board that to close the restaurant for a week would be a serious punishment for him and asked if there was a way to handle this without shutting the restaurant down. Dr. Miller explained to Mr. Kiu that the Board needs to take stricter action because the Board's first priority is to protect the public. If the restaurant is shut down, that would convey to his staff the seriousness of the situation. Dr. Miller questioned if three days would be enough instead of a week; two for training and one for another inspection. Mr. Carbone said that the training would take one day because it is an eight hour course. After more discussion, the Board decided that the restaurant could be shut down for only two days instead of a week.

*Motion by Dr. Miller, seconded by Ms. Martin to amend the previous Motion and change the week's suspension to a two-day suspension to be served on two consecutive days to be determined no later than March 15<sup>th</sup>, 2011. Monthly inspections by a Private Inspector will be required and the Show Cause Hearing will be continued for another three months to the regularly scheduled June 13, 2011 Board of Health Meeting. If there are any critical violations during that time, a meeting with the Board would be required at the next scheduled Board of Health Meeting. Unanimous approval.*

- **6:20 p.m. – Eva Xu for Teatone – Show Cause Hearing (Continued)** – Present at the meeting was Ms. Eva Xu, owner of the Teatone restaurant. Mr. Carbone explained that this Show Cause Hearing was continued from the December 13, 2010 Meeting and since the Board is not meeting again until April 4, 2011, the continuation was scheduled for this meeting instead. Mr. Carbone informed the Board that the Private Inspector initially thought that Ms. Xu was not taking the situation seriously, but had recently noticed a change in her attitude. During the January inspection, three

critical violations were noted, but in February, only one food storage violation was found. Mr. Carbone noted that it sounds like the private inspections have been helpful. Ms. Xu addressed the Board and informed them that she found the Private Inspector to be helpful by showing the staff the correct procedures to follow and that she was taking the advice very seriously. Ms. Martin asked if Ms. Xu could see a continued benefit to keeping on the Private Inspector. Ms. Xu replied that she would like to continue the private inspections for a couple more months. Ms. Martin stated that the bad habits that have been acquired over the years are hard to break, and that two months was not enough time, so she wanted Ms. Xu to continue the inspections for at least three more months.

*Motion by Ms. Martin, seconded by Dr. Miller to continue the Show Cause Hearing until the June Board of Health Meeting and require monthly inspections from a Private Inspector, and, at that time, the Board will evaluate the inspection reports to make a decision to either continue or close the Show Cause Hearing. Unanimous approval.*

### III. Discussion

- **Set May and June Meeting Dates** – The Board set the following dates for Board of Health Meetings: Monday, April 4<sup>th</sup>, Monday, May 9<sup>th</sup>, Monday, June 13<sup>th</sup>, and Monday, July 11<sup>th</sup>, 2011.
- **FY 2012 Budget Presentation and Regionalization Issues** – Mr. Carbone gave the Board a copy of the presentation the Community Development & Planning Department would be giving to the Board of Selectmen after the conclusion of this evening's meeting. <sup>1</sup>We are requesting a level funded budget for fiscal year 2012. Ms. Martin asked if Mr. Carbone thought regionalization would be brought up. Mr. Carbone replied that he thought the subject would come up and if it does, Mr. Carbone asked the Town Manager to address the subject with the Selectmen. Ms. Martin asked if the Board of Selectmen wanted to explore regionalization for cost savings, or for improvements on how our work can be done? Mr. Carbone explained that if we did become involved in regionalization, the Town of Andover would want to be a leader. Things that could be looked at would be merging departments or sharing services. Mr. Carbone did not feel that the Town of Andover is ready to become involved at this time because many questions would have to be answered including what the Board of Selectmen has in mind.

There was recently a lot of discussion about a statement that a State Health official made that there is excess capacity in Public Health Management state-wide. Mr. Carbone stated that he and other Health Directors do a lot more than just managing due to a decrease in staffing that most cities and towns have been faced with. Of course this varies with different communities and the Town of Amesbury was pointed out because that Town Manager eliminated the staff in the Health Department without

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<sup>1</sup> The paperwork for the presentation has been added to the Board of Health Packet directly after Page 23.

involving the Board of Health. Mr. Carbone felt that more planning was needed before we became involved in regionalization.

- **Calendar Year 2010 Activity Report** - Mr. Carbone explained that there was a definite drop-off in productivity with the decrease in Sanitarian, Daniel Tremblay's hours to nine per week. During the months when we were dealing with the H1N1 epidemic, the staff was very efficient and devoted a lot of time in advance on preparations for the clinics. Ms. Martin noticed that food inspections were down. Mr. Carbone explained that the fees for Contractors who help with those inspections had to be increased which decreased the number of inspection we can pay for. The whole Town will be able to use the new permitting system, where now only our department has access to the existing system. Ms. Martin asked if the new permitting software would help for efficiencies in food violations. Mr. Carbone replied that the new system should be able to track food inspections as well as septic and sewer inspections more efficiently, and hopes to put inspections on-line for everyone to see.

#### **IV. Old Business**

- **Kirkland Drive Update** – Mr. Carbone informed the Board that the Clerk Magistrate was going to issue the Criminal Complaint, and then the Judge will get the Complaint at the Arraignment. The original Attorney for the Santangelos has resigned and a new Attorney is representing them. The new Attorney has been working on helping the Santangelos with this issue as well as trying to get them to accept some Elder Services.
- **Tobacco Control Program Update (Not on Agenda)** – Mr. Carbone informed the Board that Tewksbury and Billerica will be joining the Tobacco Control Program but Stoneham is leaving the program to join another coalition in the area. Mr. Carbone informed the Board that Mr. Beauregard, Director of the Healthy Communities Tobacco Control Program, wrote the article concerning Other Tobacco Products (OTP) in the Eagle Tribune's "For the Health of It" column.

*Dr. Miller excused himself from the meeting at 7:05 p.m.*

#### **V. Definitive Subdivision Plans**

- N/A

#### **VI. Plan Review**

##### **A. D.W.R.P. Variances/Local Upgrade Approval (LUA)**

- N/A

## **VII. Staff Reports**

### **A. Director's Report:**

- **Update on Internship (Not on Agenda)** – Mr. Carbone informed the Board that he did not have any responses yet. The man who runs the State Program asked Mr. Carbone if he would take on two Interns. Mr. Carbone replied that he will host two Interns this Summer like he did last year, and would take the first two students who apply.
- **Issue Concerning Completion of 59 Harold Parker Road Septic System (In Correspondence)** – Mr. Carbone explained that while cleaning out some files, he found an issue with the size of the septic system at 59 Harold Parker Road. When he informed the owner of the issue, he called Mr. Carbone and said he felt that he didn't have a ten room, five bedroom house because he never built out the basement. While going over the floor plans with the homeowner, Mr. Carbone explained that the plans showed he had four bedrooms on the second floor and a master bedroom on the first floor. The homeowner said that Mr. Carbone told him the code requires that you count the number of rooms, divide by two and round down. Since the basement was not built out, he felt he only had nine rooms instead of ten. Mr. Carbone made an appointment to meet him at the house on Wednesday morning to look at the basement room. Ms. Martin commented that he still has a five bedroom house according to the plans. Mr. Carbone agreed and informed the Board that the homeowner was not happy with Mr. Carbone's answer. Ms. Martin offered to have a Board Meeting with the homeowner before the next scheduled Board of Health Meeting of April 4, 2011, if Mr. Carbone felt that was necessary. Mr. Carbone stated that he did speak with the Building Inspector, Christopher Clemente, and one of the options that Mr. Clemente suggested Mr. Carbone might want to think about was to allow him to amend the Building Permit Application to eliminate the basement room, and then require him to get his Certificate of Occupancy which would close out his Building Permit. Mr. Carbone could then write a letter stating that since the Building Permit is closed out, he will allow them to maintain the septic system, even though he has determined that the homeowner has a five bedroom house with a system that is designed for a four bedroom house. Ms. Martin stated that she wanted the plans to be amended to remove the basement room and designate one of the bedrooms as a study; therefore that room would not be considered a bedroom. Mr. Carbone explained that the rooms are not counted by labels. Mr. Carbone showed the Board the building plans that illustrated the layout of the rooms showing five bedrooms.<sup>2</sup> Mr. Carbone told the Board he would have the homeowner come in to speak with the Board if they wanted. If the homeowner refuses, then the options for enforcement would be to let him appeal to the courts,

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<sup>2</sup> Copies of the Basement, First Floor, and Second Floor Plans have been added to the packet in the Correspondence section with the letter to the homeowner sent out by Mr. Carbone on February 10, 2011.

or for the Board to file suit in court which is the more likely scenario. If the intent of the Board is to move forward and force his hand, the Board would have to file. Ms. Martin stated that she could see if the rooms need to be counted to determine how many could be bedrooms, but if his plan clearly shows rooms defined as bedrooms, then this should be considered a five bedroom home. Ms. Kellman stated that the regulations do not say that however. Ms. Martin suggested that the Board require a restriction that this is only a four bedroom design. Mr. Carbone stated that the Board may be able to ask for a deed restriction and would look into that.

- **Important Dates:**

- March 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup>, 2011 – Director to Washington, DC
- March 25<sup>th</sup> @ 1 p.m. in Peabody – Public Health Commissioner Dialogue
- April 4<sup>th</sup> @ 6 p.m. – Board of Health Meeting
- April 27<sup>th</sup> & 28<sup>th</sup> @ 7 p.m. – Annual Town Meeting

B. **Nurses' Reports for January, 2011** – The Nurses' Reports for January, 2011, were for informational purposes only.

C. **Inspectors' Reports for January, 2011** – The Inspectors' Reports for January, 2011 were for informational purposes only.

#### **VIII. Board Member Reports**

- N/A

#### **IX. Adjournment**

*Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 7:18 p.m. Unanimous approval.*